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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-fifth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 12th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 30 April 2001, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

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* No summary record was prepared for the first part (closed) of the meeting.

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The meeting was called to order at 3 p.m.

The second part (public) of the meeting was called to order at 4 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Second periodic report of the Republic of Korea [(E/1990/6/Add.23); list of issues (E/C.12/Q/REPOFKOR/2); background document (E/C.12/CA/REPOFKOR/1); written replies to the list of issues prepared by the Government (document without a reference number, distributed in English only) (HR/CESCR/NONE/2001/6)]

1. At the invitation of the Chairperson, the members of the delegation of the Republic of Korea took places at the Committee table.

2. The CHAIRPERSON welcomed the delegation on behalf of the Committee and gave the floor to the Permanent Representative of the Republic of Korea.

3. Mr. Eui-Yong CHUNG (Republic of Korea) welcomed the opportunity afforded his delegation to engage in constructive and fruitful dialogue with the Committee. He looked forward to the suggestions and comments from Committee members, which would help his Government better to implement the provisions of the Covenant for the greater benefit of the Korean people. Reaffirming the principle of the indivisibility of human rights, he said that democracy and good governance were crucial to the protection and advancement of economic, social and cultural rights, as well as civil and political rights. Moreover, with the inauguration of President Kim Dae-jung, respect for human rights had become a cornerstone of the country's national and foreign policy.

4. The Government's measures included strengthening labour legislation, enhancing foreign workers' rights, creating the Ministry of Gender Equality, and appointing a leading human rights activist as ambassador for human rights. More detailed information would be furnished when Ms. Kang presented the second periodic report of the Republic of Korea.

5. Ms. Kyung-Wha KANG (Republic of Korea) pointed out that her country, like many other Asian States, had been struck by a severe financial crisis in late 1997, as a result of decades of irregularities and corrupt practices in the financial and corporate sectors. Upon his inauguration, President Kim Dae-Jung had embarked upon a programme of bold reforms not only to strengthen democratic values, but also to restructure the economy and introduce greater flexibility in the labour market. The reform measures, which had understandably been fiercely resisted by the unions, had been essential for Korean competitiveness to survive in a global age. They had inevitably had painful consequences for Koreans, with many lay-offs swelling the already large ranks of unemployed, especially in the banking sector. The unemployment rate had surged as a result to 6.8 per cent from 2.6 per cent in 1997, before peaking at 8.6 per cert in February 1999.

6. Despite that particularly difficult situation, the Korean Government had spared no effort to attenuate the fall-out from the reforms and to strengthen the social security system. Accordingly, in order to fight unemployment, it had established an insurance fund financed from fees collected from employees and employers, providing the unemployed with benefits, granting subsidies to companies that hired people who had been laid off in the process of economic readjustment, and funding training programmes for the unemployed. Thanks to those measures, the unemployment rate had stabilized at 4 per cent in 2000. The Government had also undertaken to improve working conditions in small businesses and had decided to bring its labour codes into line with international standards. In that way, many improvements had taken place in the areas of protection of foreign workers and the exercise of trade-union rights, even though, owing in the main to the economic contraction, union pluralism had had to be deferred until 2007. Likewise, in the Tripartite Commission set up in 1998 as the primary consultative body on labour issues, representatives of labour, management and Government had reached a consensus on reducing weekly working hours from 47.5 to 40.

7. On the social security front, the Government had introduced a new regime with coverage extended to virtually the entire population. The Government had also implemented its policy of providing for the poor with the establishment of a public welfare system, with some 1.5 million people, or 3.3 per cent of the total population, currently as beneficiaries. With regard to public health, measures had been taken to reform the sector and weed out the corruption that had hampered the proper functioning of hospitals.

8. During the previous five years noticeable advances had been made in improving the status of women. In 1999, the Gender Discrimination Prevention and Relief Act had come into force to root out gender discrimination and sexual harassment in all fields, ranging from unemployment, education and law enforcement to policy implementation. In 1998, the Government had withdrawn its reservations to article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, concerning the nationality of women and their children. Also, January 2001 had seen the birth of the Ministry of Gender Equality, betokening the Government's commitment to fully realizing gender equality in the Republic of Korea. Also, steps taken to assist vulnerable groups in society included the introduction of a system of obligatory reporting of child abuse, and an increase in the quota for the employment of persons with disabilities from 2 per cent to 5 per cent of public service personnel.

9. In conclusion, her Government was aware that much work lay ahead and that laws enacted had not been matched by effective enforcement. The delegation therefore hoped that the dialogue with Committee members would enable her country to expand the effectiveness of its action to ensure the full exercise of economic, social and cultural rights in the Republic of Korea.

10. The CHAIRPERSON invited Committee members to start their dialogue with the State party on the delegation's introductory statement.

11. Mr. SADI, after praising the high quality of the delegation's presentation, asked whether, in negotiating its economic restructuring plan with the International Monetary Fund (IMF), the Republic of Korea had drawn attention to the country's obligations under the International Covenant on Economic, Social and Cultural Rights.

12. Mr. GRISSA welcomed the many laws enacted since 1998 with a view to increasing respect of human rights in general and of economic, social and cultural rights in particular. However, he wished to know whether they had been promulgated and, if so, what their scope was.

13. Ms. Kyung-Wha KANG (Republic of Korea) said that although the State party's obligations under the Covenant had not been raised within the IMF negotiations, those rights still occupied a place of prime importance in domestic law and that the Korean Constitution was in full conformity with the spirit of the Covenant. As for the laws enacted, they would take effect as soon as they had been promulgated.

14. Mr. AHMED remarked that some subjects that had not been touched on in the introductory address warranted more detailed discussion in the dialogue with the delegation. They included the demographic imbalance in the south of the country caused by the rural exodus of young people; education, which was free only in primary schools and not easily accessible to the poor; and housing, which was in need of large-scale reforms.

15. The CHAIRPERSON suggested that those questions could be raised during consideration of each of the pertinent articles of the Covenant. Also, since the written replies supplied by the Government appeared in English only, she invited the delegation to give a brief summary of the general legal framework for the protection of human rights and of matters relating to article 2, paragraph 2, concerning non-discrimination and article 3 concerning gender equality.

General legal framework for the protection of human rights; non-discrimination (art. 2.2); gender equality (art. 3)

16. Ms. Kyung-Wha KANG (Republic of Korea), referring to specific measures taken by the Government to implement the recommendations contained in the Committee's concluding observations on the country's initial report (question 1), said that the Government had adopted on 12 August 1999 a law guaranteeing satisfaction of basic needs for protecting low-income families. It had also adopted, amended or expanded various laws relating to employment and social welfare to bring them into line with international standards for protecting and promoting the rights enshrined in the Covenant. Lastly, the law on equal conditions of employment had been reformed in April 1988 to protect women's rights on the labour market and guarantee equality of job opportunities. Established in March 1998, the Presidential Commission on Women's Affairs had depended directly on the President until it had become the Ministry of Gender Equality in January 2001.

17. The Korean Government had spared no effort to prepare a bill creating a national human rights commission (question 2) in the wake of the United Nations Commission on Human Rights 1993 resolution inviting States to do so. With the inauguration of the new President in February 1998, everything had been done to have the bill presented to the National Assembly in September 1998. It was currently before the National Assembly and could be adopted very shortly. Regarding the status of the Covenant in the domestic legislation (question 3), the Republic of Korea upheld the basic principle that international instruments and Korean laws had equal legal status. In the event of conflict, the Supreme Court ruled.

18. In order to make society and the competent authorities aware of the rights set forth in the Covenant (question 4), the Government had circulated to schools, research institutes and universities numerous publications on the various international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights. The Committee's concluding observations on the country's initial report had also been published and widely circulated to the competent authorities and organizations. The Republic of Korea had proclaimed 10 December World Human Rights Day and the first week of December Human Rights Week. During that week, the population could obtain free legal advice, and ceremonies were organized to honour human rights defenders and draw attention to the importance of such rights.

19. On the subject of non-discrimination, the Government had taken steps to respond to the needs of the society's most vulnerable groups, such as foreign workers, the destitute, the homeless and the disabled (question 5). In October 1998, it had promulgated the Guidelines for the Protection of Foreign Workers, which extended to the latter the guarantees provided in many labour laws, including the Labour Standards Act, which banned any discrimination based on nationality, the Minimum Wage Act and the Occupational Safety and Health Act, whether foreign workers had or had not broken immigration law. The authorities had also shown their determination to protect and promote the fundamental rights of foreign workers by ratifying the ILO Convention concerning Discrimination in Respect of Employment and Occupation and the ILO Equal Treatment Convention. It had set up a basic social welfare system designed to protect and promote the fundamental rights of poor workers. It had also extended the legal aid scheme to cover workers earning less than 1.5 million won (US$ 1,250) per month in return for payment of a modest sum to cover administrative costs. It had established a homeless protection system comprising 150 reception centres spread across the country, which provided the homeless with free meals, health care and counselling. Special centres, such as detoxification centres for alcoholics and drug users, were open to them. Lastly, the Government encouraged them to rejoin the social mainstream, financing some of their vocational projects or finding them jobs in the public or private sector.

20. Turning to protection of the disabled, she invited Committee members to refer to paragraphs 42-44 of the country's second periodic report, adding that a law on the promotion of employment, etc. for the disabled, adopted in 1996, made it obligatory for businesses with more than 300 employees to hire people with disabilities. Moreover, a business would receive State financial assistance in the form of subsidies if its number of disabled workers exceeded the minimum quota. In conclusion, the Government had adopted a five-year plan (1996-2000) for promoting jobs for the disabled with a view to subsidizing vocational training institutes for the disabled, financing the construction of establishments of higher vocational education and increasing the number of jobs accessible to persons with disabilities.

21. The countries of origin of the 96 asylum-seekers who had applied for refugee status over the five-year period 1996-2001 (question 6) were the following: Myanmar, 21; Algeria, 18; Iran, 5; Congo, 26; Egypt, 5; other countries, 21. The Committee responsible for studying asylum applications comprised representatives of seven ministries and members of the Korean Red Cross. Its decisions were based on the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, and on domestic law. However, most asylum-seekers had not been successful, since their motives were purely economic. Nonetheless,

the Korean Government had recently granted refugee status to an Ethiopian asylum-seeker, on the grounds that he might be persecuted if he were returned to his country of origin. Lastly, for humanitarian reasons, asylum-seekers who were not granted refugee status had the right to remain on Korean territory for six months from the time their application was rejected, during which time they were not penalized for working without a permit.

22. In reply to questions relating to the status of women (question 7), including job opportunities, equal remuneration, inheritance rights, domestic violence, access to education and other areas in which sexual discrimination was traditionally rife, since time was short she invited Committee members to refer to paragraphs 34-41 of the report. It was also important to mention the law adopted on December 1997 on the prevention of domestic violence and the protection of victims, under which national and local legal and institutional agreements had been concluded in an effort to stave off domestic violence, protect victims and provide them with health care and counselling. The Government had also adopted legislative measures to improve the status of women, including reform of the chapter of the Civil Code relating to inheritance rights; revision of the law on Korean nationality, allowing women to choose their nationality; amendment of the law concerning recruitment into the army; repeal of provisions that discriminated against women in the public service; and review of the law on equal employment opportunities designed to prohibit any indirect discrimination or sexual harassment in the workplace.

23. Mr. MALINVERNI, supported by Mr. TEXIER, said that the rank attributed to international instruments under the Constitution - which placed such instruments on an equal footing with domestic legislation, thereby making it possible for a subsequent or special domestic law to depart from them - did not ensure the primacy of the Covenant. By their very nature, international instruments must take priority over domestic legislation.

24. He sought more information on the regulations, adopted in 1998, which subjected foreign workers to the labour laws. Did those regulations apply to all foreigners? Or was a distinction drawn between those who were established and those enjoying only a temporary status?

25. On the subject of refugees, he wished to know whether the decisions of the relevant Committee could be appealed in the courts or whether they were final. Was it to be deduced from the tiny number of asylum applications granted that the authorities applied a strict definition of the notion of refugee as set forth in the 1951 Geneva Convention? Were "refugees from violence", namely persons who, although not persecuted, wished to escape violence, included in that definition? In conclusion, was it true that during the asylum application procedure, which could be quite protracted, the applicants were left to their own devices without material or moral assistance?

26. Mr. SADI commended the State party on the various legislative measures it had taken to implement the recommendations made by the Committee in 1995 (document E/1996/22), particularly the Equal Employment Act. Had those measures been effective? If so, in which specific cases? Did the delegation consider the Committee's recommendations to be binding?

27. On the subject of human rights awareness, he wished to know whether compulsory human rights education was imparted in schools and whether training in the subject was provided for judges and the police force.

28. Mr. KOUZNETSOV, supported by Mr. TEXIER, pointed out that in 1995 the Committee had already raised the issue of the status of the Covenant under national legislation. The delegation's assertion that Korea's laws were consistent with the provisions of the Covenant was too vague. Had any mechanism been put in place for verifying the compatibility of the former with the latter, in accordance with the Committee's recommendations? Which inalienable rights were guaranteed by the Korean Constitution? Was any distinction drawn between civil and political rights and economic, social and cultural rights? Was protection of economic, social and cultural rights ensured by the courts or other institutions, such as an ombudsman?

29. He was surprised that the Republic of Korea, which was still a wealthy country despite the consequence of the Asian crisis, had ratified only 10 of the 16 ILO conventions of particular interest to the Committee. He would like some specific answers on that point. Why had the State party, for instance, not ratified the Forced Labour Convention or the conventions concerning freedom of association?

30. Mr. TEXIER requested additional information on the current plan to set up a national human rights commission, pursuant to the Committee's recommendation. Would that commission's independence be guaranteed? Would its budget be at least sufficient to enable it to function properly? Would it involve non-governmental organizations (NGOs), trade unions or representatives of civil society in its work? Would its scope also extend to the field of economic, social and cultural rights?

31. Lastly, he was concerned about the extremely restrictive definition the Korean authorities appeared to apply to the notion of refugee and by the precarious situation of asylum-seekers.

32. Mr. ATANGANA said he would like further information on the measures provided by law to protect women who were victims of violence.

33. Mr. WIMER ZAMBRANO wished to know exactly what redress was available to persons or groups who believed that their economic, social and cultural rights had been breached. Where foreign workers were concerned, State protection was clearly inadequate to cover the numbers of workers involved, who lived in deplorable conditions.

34. Ms. BARAHONA RIERA welcomed the fact that the guaranteeing of gender equality had been entrusted to a ministry, attesting to the importance the Korean Government assigned to that issue. The established legal framework appeared to offer sufficient means for bringing about gender equality. How did the ministry function in practice? What would its share of the national budget be?

35. She asked whether the provisions of the Civil Code relating to inheritance rights had been amended and what means the Ministry of Gender Equality or other bodies made available to ensure that women could claim their inheritance rights. She wished to know whether the national plan for the prevention of domestic violence had been effective - based on statistics - and what impact it had had on society. Also, what consequences had the economic and financial crisis in Korea had for women's jobs?

36. Mr. PILLAY, referring to the delegation's ambivalent attitude to the status of the Covenant in domestic legislation, asked whether it could be superseded by a special law enacted after its ratification, which would run counter to the obligations undertaken by the State party. He wished to know why the State party had not followed up the Committee's recommendation to ensure the primacy of the Covenant over domestic law and whether the Korean authorities intended to take steps to discharge their obligations in that respect.

37. Mr. RATTRAY requested detailed information on the exact status the Covenant enjoyed in Korean law. Could the delegation, for instance, say whether obligations arising from that instrument were legally binding or whether they were considered only as objectives to be attained in due course? More specifically, was it possible, in the Republic of Korea, to invoke violation of the provisions set forth in the Covenant in a court of law? If so, he would be grateful for precise examples. What type of rules were applicable to migrant workers? Were they administrative regulations or actual laws?

38. Mr. HUNT said he would like to know whether the Korean human rights protection institutions that were to be created would be empowered to guarantee the economic, social and cultural rights enshrined in the Covenant. He also recalled that in the Programme of Action of the 1993 Vienna World Conference on Human Rights, States had been called upon to implement a national human rights plan of action. Had that been done in the Republic of Korea? Or would the task fall to the future national human rights commission?

39. Mr. THAPALIA said that while the information furnished by the Korean delegation was interesting, it differed considerably from that provided by other sources. According to an Amnesty International report, asylum-seekers encountered numerous problems in the Republic of Korea and were subjected to pressure, not to say threats, to refrain from complaining about their ill-treatment. Another report, from the United States Department of State, claimed that persons of Chinese origin born and residing in the Republic of Korea could neither acquire Korean citizenship nor hold public posts. The same report also mentioned a great many acts of discrimination against women in the family, at work and in society in general. He would like the delegation to comment on those allegations. Could it also explain the disparity noted between the content of the laws and the de facto discrimination against women, the disabled and refugees? What concrete measures had the Government taken in the field of economic, social and cultural rights since the submission of its second periodic report to the Committee? Could the delegation also provide statistics on domestic violence, specifying the number of such cases heard in the courts and disclosing the time frame required for their settlement?

40. Mr. CEAUSU felt that the two principles of Roman law, namely lex posterior derogat priori and generalibus specialia derogant, were not properly applied in the Republic of Korea. In conformity with those principles, the State party would need, on the one hand, to declare that the Covenant had the status of special law and therefore took precedence over all previously adopted legislation and, on the other, to give the assurance that no domestic law relating to the rights enshrined in the Covenant contained provisions that ran counter to the Covenant. Only if those two conditions were met could the Covenant take precedence over domestic legislation.

41. He also noted that although illegal foreign workers were protected by Korean social and labour legislation, they were exposed on account of their situation to prosecution. The illegal

recruitment of foreign workers should be treated, however, as an offence on the part of employers, not employees, who often did not speak Korean and were unfamiliar with labour laws.

42. He note furthermore that the Republic of Korea had agreed, "for humanitarian reasons", to enrol the children of foreign workers in primary schools. It should be noted that the rights of children were, regardless of their parent's status, rights erga omnes, in other words universally binding obligations, which meant that any State was obliged, from the moment it became aware of a child's presence on its territory, to guarantee that child the protection and enjoyment of all the rights set forth in the Covenant. Therefore, there was no reason for the State party to refer to humanitarian reasons; it was simply fulfilling the obligations it had incurred under the Covenant.

43. He asked the delegation to specify what happened to asylum-seekers whose applications were turned down. Did they leave the country voluntarily or were they repatriated to their countries of origin against their will?

44. Mr. GRISSA said the question of foreign workers appeared to cause the Korean authorities some difficulty. To judge from available figures, the Republic of Korea had a net negative migration rate of some 3 per cent. If many Koreans were leaving their country and at the same time the population was ageing, the State party would soon find itself, like many European countries, calling on foreign labour to ensure its economic growth. What did it intend to do to address the problem of population ageing?

45. Mr. MARTYNOV asked whether the national human rights commission due to be set up would be competent to deal with the violation of the rights guaranteed under the Covenant. Also, was a migrant worker with a Korean wife automatically issued with a residence permit? The delegation had said that any business with more than 300 employees was legally bound to employ 2 per cent of persons with disabilities. Was that provision actually enforced? If so, how did it work in practice?

46. Ms. Kyung-Wha KANG (Republic of Korea) said her delegation would reply later to the questions put by Committee members. She was, however, in a position to announce that the Korean National Assembly had already passed the law creating the National Human Rights Commission.

The meeting rose at 6 p.m.